



Wyoming Lender Alert

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January 2005

Steven Despain, District Director

Making a Difference for Small Business in Wyoming

SPECIAL LENDER ALERT

IMPORTANT

7a, International Trade & 504 Loan Changes For 2005

(See Attached Four Pages)

Happy New Year!

Upcoming Events

January 4 --Women's Roundtable, Jackson

January 5 --Women's Roundtable, Casper

January 7-8--VFW Conference, Cody

January 13 --Women's Roundtable, Laramie

January 18 --Women's Roundtable, Cody

January 20 --Women's Roundtable, Powell

January 25 --WNET Call

January 29 --Woman To Woman Conference, Gillette

******IMPORTANT NOTICE******
2005 LOAN PROGRAM CHANGES

**Changes to 7(a) Loan Program
New Legislation**

On December 8, 2004, the FY05 Omnibus Appropriations Act (P.L. 108-447) was signed into law. Included in this Act is the Small Business Reauthorization and

Manufacturing Assistance Act of 2004 ("Reauthorization"), which amended the Small Business Act ("SBA Act"). The following are the changes to the 7(a) Loan Program as a result of the changes in the law. These changes are effective as of December 8, 2004. Amendments will be made to SBA's regulations and Standard

Operating Procedures (SOP) to incorporate these changes as soon as possible.

Lending Authority

For FY 2005, the 7(a) Loan Program will have \$16.0 billion in lending authority.

Loan Amount*

	<u>For Loans Approved 10/1/04 Through 12/07/04</u>	<u>For Loans Approved Beginning 12/08/04</u>
<u>Regular 7(a) Loan Program</u>		
Maximum Gross Loan Amount	\$2.0 million	No change
Maximum SBA Guarantee Amount	\$1.0 million	\$1.5 million
<u>SBA Express</u>		
Maximum Gross Loan Amount	\$250,000	\$350,000
<u>Community Express and Export Express</u>		
Maximum Gross Loan Amount	\$250,000	No change

(*Note: All post-approval modifications, including any requests for loan increases, are governed by the rules in effect at the time the loan was approved. The Reauthorization does not affect the maximum loan amount or maximum SBA-guaranteed amount for loans approved prior to December 8, 2004. However, any loan approved on December 8, 2004 or thereafter is subject to these new maximum amounts and, therefore, could be increased accordingly.)

Fees

The 7(a) Loan Program, as a result of the Reauthorization, becomes a zero subsidy loan program financed through fee income to SBA from borrowers and lenders. (Note: The approval date of a loan determines the fee percentages that apply to that loan. The Reauthorization does not affect the fee structure in place for loans approved prior to December 8, 2004.)

The Reauthorization amended the SBA Act to allow SBA the flexibility to adjust these fees, as long as they remain under the caps specified in the

SBA Act, in order to maintain a zero subsidy rate for the 7(a) Loan Program. SBA intends to analyze these fees annually and make adjustments as necessary.

The following chart sets forth the changes in the guaranty fee and the lender's yearly service fee applicable to all loans approved on or after December 8, 2004 through the end of FY 2005. (Note: The Reauthorization specifically changed the word "annual" to "yearly" when discussing the ongoing guaranty fee.)

<u>Fees</u>	<u>Loans Approved October 1, 2004 Through December 7, 2004</u>	<u>Loans Approved December 8, 2004 Through End of FY 2005</u>
<u>Guaranty Fee</u> [under 13 CFR 120.220(a)]		
<u>Short Term Loans (12 months or less)</u>	0.25 percent of SBA guaranteed portion.	No change.
<u>Loans with a Maturity greater than 12 months</u>		
<u>Total (Gross) Loan Amount</u> \$150,000 or less	2 percent of SBA guaranteed portion. Lender is permitted to retain up to 25 percent of the fee. (50 basis points)	No change.
\$150,001 to \$700,000	3 percent of SBA guaranteed portion.	No change.
\$700,001 – maximum loan amount	3.5 percent of SBA guaranteed portion.	No change.
<u>When SBA-Guaranteed Portion of Loan Amount is over \$1,000,000</u> \$1,000,001 to \$1,500,000	No additional fee because SBA's guarantee is limited to \$1,000,000.	An <u>additional</u> 0.25 percent on any SBA-guaranteed amount over \$1 million (a total of 3.75 percent on the SBA-guaranteed portion over \$1 million).*
<u>Lender Yearly Service Fee</u> (under 13 CFR 120.220(f))	0.50 percent of the outstanding balance of the SBA guaranteed portion	No change.

(*Note: An example of the additional fee of 0.25 percent on the SBA-guaranteed portion over \$1.0 million is: the guaranty fee on a \$2,000,000 loan with a 75 percent guaranty (\$1.5 million guaranteed amount) would be 3.5 percent of \$1,000,000 (\$35,000) PLUS 3.75 percent of \$500,000 (\$18,750) which totals \$53,750.)

7(a) Loan Guaranty Limit

As set forth in the chart on the first page of this Notice, the loan guaranty limit under section 7(a)(3)(A) of the Act is increased from \$1.0 million to \$1.5 million. Any one small business borrower (together with its affiliates) may now obtain a loan or loans with a total SBA-guaranteed amount of up to \$1,500,000 outstanding. As a reminder, the 7(a) and 504 Loan Programs are combined when determining the maximum SBA guarantee amount that one borrower (including any affiliates) is permitted to have approved and outstanding. (SOP 50 10, Subpart A, Chapter 4, para. 2.)

SBAExpress

The Reauthorization amended the SBA Act to establish the "Express Loan Program." This program covers loans made by a lender utilizing to the maximum extent practicable its own loan analyses, procedures, and documentation and which have an SBA guaranty rate of not more than 50 percent. SBA considers this to be a permanent enactment of the SBAExpress program (but not of those Express programs that have an SBA guaranty rate of greater than 50 percent). The Reauthorization also has increased the maximum gross amount of an SBAExpress loan from \$250,000 to \$350,000.

The Reauthorization does not affect either the Community- Express or the ExportExpress programs because the SBA guaranty percentage applicable to those programs exceeds 50 percent (for both these programs, SBA permits the same maximum percentage of SBA guaranty as the regular 7(a) Loan program). Therefore, the status of these two programs remains the same: they continue to be pilot programs and they each continue to have a maximum gross loan amount of \$250,000.

Piggyback Financing Not Available

SBA Policy Notice No. 5000-931, suspending SBA's policy in SOP 50 10 (4) of allowing 7(a) Loans to be structured as "piggyback financing" as of October 1, 2004, remains in effect.

Pursuant to SOP 50 10 (4), piggyback financing occurs when one or more lender(s) provides more than one loan(s) to a single borrower at or about the same time, financing the same or similar purpose, and where SBA guarantees the loan secured with a junior lien position on the assets being financed. SBA does not consider a financing to be piggyback financing if SBA receives a senior lien on all the assets being financed, or if SBA and the commercial lender share the same lien position ("pari passu") on all the assets being financed.

Lenders are directed to forward questions to Bob Auflick at Robert.auflick@sba.gov or 307-261-6507.

Changes to International Trade Loan Programs as a result of changes to the Small Business Act

On December 8, 2004, the FY05 Omnibus Appropriations Act (P.L. 108-447) was signed into law. Included in the Act is the Small Business Reauthorization and Manufacturing Assistance Act of 2004 ("Reauthorization"). As a result of changes in the law, the following changes to the International Trade Loan program are made and are effective as of the date of enactment (December 8, 2004). Amendments will be made to SBA's Standard Operating Procedures (SOP) to incorporate these changes as soon as possible.

International Trade Loans

Section 7(a)(16)(A) of the Small Business Act ("SBA Act") has been amended to provide that, if SBA determines that an International Trade ("IT") loan "will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its competitive position," SBA can make such a loan to assist the concern in:

"(i) the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade; or

(ii) the refinancing of existing indebtedness that is not structured with reasonable terms and conditions."

Section 7(a)(16)(B) of the SBA Act has been amended to provide that each IT loan "shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan *or on other assets of the small business concern.*" (The Reauthorization added the italicized language.) Thus, additional collateral may be accepted to ensure that the loan is fully collateralized. The requirement for a first security interest on the property or equipment financed by the loan continues to be mandatory for all IT loans.

The only eligible use of proceeds for an IT loan is the acquisition, construction, renovation, modernization, improvement or expansion of long-term fixed assets or the refinancing of an existing loan used for these same purposes, subject in both cases to the other applicable requirements of the SBA Act. There can be no working capital as part of an IT loan or as part of any refinancing.

The Reauthorization adds refinancing as an eligible use of proceeds. In accordance with SBA policy for refinancings generally, all refinancing requests in the IT Loan Program must demonstrate that the act of refinancing will also provide a substantial benefit to the small business. (SOP 50-10(4), Subpart A, Chapter 2, para. 12)

Changes in Definitions

The Reauthorization adds Section 7(a)(16)(C) to the SBA Act. The new section amends the definition of a small business concern engaged in international trade. A small business concern is engaged in international trade if, as determined by SBA, "the small business concern is in a position to expand existing export markets or develop new export markets." Under the previous version of the SBA Act, the small business concern was required

to demonstrate that it was in a position to “significantly” expand its existing export markets.

The Reauthorization also adds Section 7(a)(16)(D) to the SBAct. The new section amends the definition of a small business concern adversely affected by international trade. A small business concern is adversely affected by international trade if, as determined by SBA, “the small business concern (i) is confronting increased competition with foreign firms in the relevant market; and (ii) is injured by such competition.” This replaces the previous version of the SBAct that required the small business concern to demonstrate that it was confronting increased “direct” competition with foreign firms in the relevant market.

The Reauthorization also adds Section 7(a)(16)(E) to the SBAct. The new section provides that in order to demonstrate the injury required by Section 7(a)(16)(D)(ii), the small business concern can submit, and SBA must accept, any finding of injury by the International Trade Commission or the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.).

Lenders and SBA processing offices are reminded that there continues to be a requirement for the IT applicant to provide a business plan that provides sales projections, identifies the assumptions to support these projections, and addresses how the applicant is eligible under the

special IT requirements. (SOP 50-10(4), Subpart C, Chapter 1, para. 7.)

Exception to the \$1.5 million SBA Guaranty limit

The maximum gross amount (\$2 million) and SBA-guaranteed amount (\$1.5 million) for an IT loan is the same as a regular 7(a) loan. However, there is an exception to the maximum SBA 7(a) guaranty amount to one borrower (including affiliates).

Section 7(a)(3)(B) of the SBAct provides for a maximum SBA guaranty to a small business (including affiliates) of \$1,750,000 under the following circumstances: (1) The small business has been approved for an IT loan, and (2) the business has applied for a separate working capital loan (or loans) under EWCP and/or other 7(a) loan programs. When there is an IT loan and a separate working capital loan, the maximum SBA guaranty on the combined loans can be up to \$1,750,000 as long as the SBA guaranty on the working capital loan does not exceed \$1,250,000. (Prior to the Reauthorization, the maximum guaranty amount on the combined loans was \$1,250,000 of which not more than \$750,000 guaranty amount could be applied to the working capital loan).

In all cases, to receive the maximum SBA guaranty amount of \$1,750,000, the financing package for the small business must include an IT loan that was approved after December 7, 2004.

Lenders are directed to forward questions to Bob Auflick at Robert.auflick@sba.gov or 307-261-6507.

Changes to 504 Loan Program as a Result of New Legislation

On December 8, 2004, the FY05 Omnibus Appropriations Act (P.L. 108-447) was signed into law. Included in the Act is the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (“Reauthorization”), which amended the Small Business Investment Act (“SBI Act”) provisions governing the 504 Loan Program. These changes are effective as of the date of enactment (December 8, 2004). Amendments will be made to SBA’s regulations and Standard Operating Procedures (SOP) to incorporate these changes as soon as possible.

Lending Authority

For FY 2005, the 504 Loan Program will have \$5 billion in lending authority.

504 Loan/Gross Debenture Amount

SBA provides a 100 percent guaranty of a debenture that is sold as part of a pool of debentures to investors. Once the debenture is sold, a certified development company (CDC) then loans those funds to the borrower as a 504 loan. The following is a chart that sets forth the changes to the maximum 504 loan amount.

<u>Maximum 504 Loan Amount</u>	<u>Loans Approved Through 12/07/04</u>	<u>Loans Approved on or after 12/08/04</u>
Regular 504 loans	\$1.0 million	\$1.5 million
504 loans that meet a public policy goal (described in 501(d)(3) of the SBI Act)	\$1.3 million	\$2.0 million
504 loans to “small manufacturers” (new category, see 502(2)(B) of SBI Act as amended by Reauthorization)	N/A – This category did not exist prior to the Reauthorization	\$4.0 million

504 Project Job Requirements

As a reminder, the dollar amount of a 504 loan request from a small business is combined with all outstanding 504 and 7(a) guaranty loan balances of that same business (including all affiliates) when determining the maximum SBA guaranteed amount that one borrower is permitted to have approved and outstanding. (SOP 50 10, Subpart A, Chapter 4, para. 2, page 96-1)

The 504 Loan Program was principally designed to promote job creation. A CDC must demonstrate that each 504 project meets at least one of the following three economic development objectives: 1) creation of a specific number of jobs within two years of the completion of the

project or the preservation or retention of jobs attributable to the project; 2) improvement of the economy of the locality; or 3) achievement of one or more of the public policy goals specifically listed in Section 501(d)(3) of the SBIAct. If eligibility is based on the criteria in items 2) or 3) above, the overall loan portfolio of the CDC must also satisfy applicable job creation or retention criteria.

Last year, SBA changed the job creation and retention criteria regulations (13 CFR §§120.861 and

120.829). The Reauthorization supercedes these regulations by amending Section 501(e) of the SBIAct to set forth specific job

creation and retention requirements. The following chart sets forth the changes:

<u>Job Creation or Retention Requirement</u>	<u>As of 11/6/03 Federal Register Notice</u>	<u>For Loans Approved Beginning 12/08/04</u>
<u>Calculations Based on Individual Loans</u>		
Regular 504 Project	1 job for every \$50,000 guaranteed by SBA	Same except for a new provision for a Small Manufacturer (see below)
504 Project for a Small Manufacturer	Category did not exist	1 job for every \$100,000 guaranteed by SBA.
<u>Calculations Based on Total Loan Portfolio</u>		
CDC's total 504 Loan Portfolio	1 job for every \$50,000 in CDC's outstanding 504 loan portfolio	1 job for every \$50,000 in CDC's outstanding 504 loan portfolio, <u>excluding</u> 504 loans to Small Manufacturers and in Special Geographic Areas. *
Portion of CDC's 504 Loan Portfolio comprised of 504 projects located in Special Geographic Areas *	1 job for every \$65,000 in CDC's outstanding 504 loan portfolio **	1 job for every \$75,000 in CDC's outstanding 504 loan portfolio, excluding 504 loans to Small Manufacturers.
Portion of CDC's 504 Loan Portfolio comprised of 504 projects to Small Manufacturers	Category did not exist	Loans to Small Manufacturers are excluded from the job requirement applicable to CDC's portfolio

* Special Geographic Areas means Alaska, Hawaii, State-designated enterprise zones, empowerment zones, enterprise communities, and labor surplus areas.

**If a CDC's total 504 portfolio exceeds 1 job for every \$50,000 guaranteed by SBA, the CDC may wish to separate out those loans to 504 projects located in Special Geographic Areas. The CDC's portfolio for these loans is permitted to average 1 job for every \$75,000 guaranteed by SBA.

504 Loans to Small Manufacturers

The Reauthorization permits 504 loans for Small Manufacturers for an amount up to \$4 million. Small Manufacturer is defined as a small business concern that has:

- 1) its primary business classified in sector 31, 32, or 33 of the North American Industrial Classification System (NAICS); and
- 2) all of its production facilities located in the United States.

In order to qualify for a \$4 million 504 loan, therefore, the Small Manufacturer must 1) meet the

definition of a Small Manufacturer described above, and 2) either (i) create or retain at least 1 job per \$100,000 guaranteed by SBA (Section 501 (d)(1) of the SBI Act), or (ii) improve the economy of the locality or achieve one or more public policy goals (sections 501(d)(2) or (3) of the SBI Act).

Appropriations

The 504 Loan Program continues to be a zero subsidy loan program financed through fee income from borrowers, lenders and CDCs. Therefore, no appropriation is needed to subsidize the loans. The on-going guaranty fee SBA charges is set each year depending on the subsidy model's estimate of the default rate and recovery rate for loans approved in that year. The on-going guaranty fee for loans approved in FY05 is 0.288.% (SBA Policy Notice No. 5000-931).

504 Applications Approved but not Funded

As a result of the Reauthorization's increase in the maximum 504 loan amount, the CDC may wish to increase a loan approved prior to the date of this Notice. CDCs may do so only if: 1) the loan is not yet

disbursed; and 2) it was approved on or after December 8, 2004. Because the limits in effect at the time the loan was approved govern the loan, any loan approved prior to December 8, 2004 must be cancelled and resubmitted, with additional supporting project information, in order to take advantage of these legislative changes.

Questions

Lenders are directed to forward questions to Bob Auflick at Robert.auflick@sba.gov or 307-261-6507.